

**MINUTES  
ENERGY FACILITY SITE EVALUATION  
COUNCIL OF WASHINGTON**

**October 11, 2004 - Regular Meeting**  
925 Plum Street S.E., Room 308  
Olympia, Washington 1:30 p.m.

**ITEM NO. 1: CALL TO ORDER**

CHAIR LUCE: The meeting for October 11, 2004 for the Washington State Energy Facility Site Evaluation Council will come to order. Clerk will call the roll.

**ITEM NO. 2: ROLL CALL**

**EFSEC Council Members**

**Community, Trade & Economic Development**  
**Department of Ecology**  
**Department of Fish & Wildlife**  
**Department of Natural Resources**  
**Utilities and Transportation**  
**Kittitas County**  
**Chair**

Richard Fryhling  
Hedia Adelman  
(via phone) Chris Towne  
Tony Ifie  
Tim Sweeney  
(via phone) Patti Johnson  
Jim Luce

MR. MILLS: There is a quorum.

**OTHERS IN ATTENDANCE**

**EFSEC STAFF AND COUNSEL**

Allen Fiksdal  
Ann Essko, AAG  
Shaun Linse, Court Reporter

Mike Mills  
Mariah Laamb

**EFSEC GUESTS**

Charles Carelli – Independent Contractor for EFSEC  
Lauri Vigue – Department of Fish and Wildlife  
Darrel Peoples – Attorney for Kittitas & Wild Horse Projects  
Jim Huron – Dep. Prosecutor for Kittitas County (via phone)  
Mot Hedges – Northwest Energy

David Bricklin – Attorney with Bricklin, Newman, Dold (via phone)  
Mark Anderson – CTED Energy Policy  
Bill LaBorde – Northwest Energy Coalition (via phone)  
Karen McGaffey – Attorney with Perkins Coie (via phone)

**ITEM NO. 3: ADOPTION OF THE PROPOSED AGENDA**

CHAIR LUCE: Councilmembers, have you had a chance to review the proposed agenda?

MR. IFIE: Yes.

CHAIR LUCE: Are there any proposed changes, additions? Hearing no changes or proposed additions, the agenda is approved as proposed.

**ITEM NO. 4: MINUTES**

CHAIR LUCE: The next item on the agenda is minutes. Councilmembers, have you had a chance to review the proposed minutes for August 25, 2004, and September 7, 2004?

MS. TOWNE: I've reviewed them and submitted my edits to Mariah. They are technical in nature.

CHAIR LUCE: Thank you. Other Councilmembers, do you have any changes? Hearing no changes, the minutes for August 25, 2004 and September 7, 2004 are adopted as approved with the technical changes offered by Councilmember Chris Towne.

**ITEM NO. 5: WILD HORSE WIND POWER PROJECT**

<i>Extension of Period for Resolution of Land Use Consistency</i>	<i>Allen Fiksdal, EFSEC Chair</i>
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CHAIR LUCE: The next item on the agenda is classified as an action item, Wild Horse Wind Power Project, Extension of Period for Resolution of Land Use Consistency. Irina was listed for this. Allen, I understand you may handle this matter.

MR. FIKSDAL: That's correct, Mr. Chair. This is an extension of the period where Zilkha asked to work with Kittitas County on land use consistency issues. I think if you recall at the prehearing conference in Ellensburg, I believe it was two weeks ago, this item came up on the agenda for discussion, and Judge Torem mentioned that there would probably be a prehearing conference on November 1, and this would be an action item at that time for the Council. So, Mr. Chair, I suggest that you suspend this until the next Council meeting on November 1. You have in your packets a letter from Mr. Peeples regarding this issue, but, again, I would recommend that you defer it until the next Council meeting.

CHAIR LUCE: We will be taking action, if I'm correct, on a number of items regarding Wild Horse Wind Power Project at that November 1 meeting; is that correct?

MR. FIKSDAL: I believe that's so.

CHAIR LUCE: So in the interest of administrative efficiency, if I understand you correctly, bundle those items to one point in time thereby giving the Councilmembers the opportunity to review them all in context.

MS. ADELSMAN: Is that including the intervention?

MR. FIKSDAL: I don't recall.

MS. ADELSMAN: When we had the Wild Horse meeting, there was a petition to intervene that we need to respond to.

MR. FIKSDAL: Mr. Lathrop's briefs were due last Friday. He submitted those briefs. Mr. Peeples, I believe, has until this coming Friday to reply.

MR. PEEPLES: That's correct.

MS. ADELSMAN: Then we could consider it on November 1?

MR. FIKSDAL: November 1 is the next meeting.

CHAIR LUCE: I believe that that's correct, Hedia. Therefore, we would in the interest for administrative efficiency review all pending items with respect to Wild Horse at that meeting.

MS. ADELSMAN: Okay.

CHAIR LUCE: Councilmembers, do you have any questions or comments on this proposal to extend? It's listed as an action item, so I will ask for a voice vote.

MS. TOWNE: Well, it's a motion to suspend until November 1 as I understand it.

MR. FIKSDAL: Is that what you're doing?

CHAIR LUCE: Yes.

MS. TOWNE: I move that we suspend action on the Wild Horse request for a second extension of the preemption period until November 1.

MR. IFIE: I second it.

CHAIR LUCE: Discussion? Call for the question.

MR. FRYHLING: Question.

CHAIR LUCE: All in favor say aye.

COUNCILMEMBERS: Aye.

#### **ITEM NO. 6: BP CHERRY POINT PROJECT**

<b><i>Possible Reconsideration of Order No. 803</i></b>	<b><i>Allen Fiksdal, EFSEC Chair</i></b>
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CHAIR LUCE: The next item on the agenda is the BP Cherry Point Project Possible Reconsideration of Order No. 803. My understanding is that -- and I'm looking for the BP representative.

MR. FIKSDAL: Ms. McGaffey is on the phone.

CHAIR LUCE: Ms. McGaffey is on the phone, and my understanding is that Ms. McGaffey has been meeting with you, discussing with you --

MR. FIKSDAL: That's correct.

CHAIR LUCE: -- and with Ann certain issues that need possible clarification of our order, so I will turn the chair, turn the podium over to you.

MR. FIKSDAL: Ms. McGaffey, would you like to just summarize what your motion for reconsideration entails.

MS. MCGAFFEY: Sure. On Thursday, BP filed a motion for reconsideration. Needless to say, BP is very happy with the Council's decision to recommend approval of the project, but in looking through the site certification agreement we identify three provisions of that agreement that we thought should be clarified or changed. The first one is Article 3(a)(1), which is the provision that generally explains who is bound by the agreement. As originally drafted it was written to say that the agreement would bind the certificate holder, as well as affiliated organizations, contractors, subcontractors, and other entities. BP was concerned that the corporate official for BP West Coast Products is not in the position to sign a contract on behalf of those other entities. So as the Chair has noted we had discussions with Allen, as well as the Council's attorney, Ann Essko, and agreed upon language that we think addresses the Council's concern but avoids the problems of asking somebody to sign a document that they don't have authority to sign.

The second issue concerns Article 5(g)(1) and (2), which are the provisions that concern cultural resources and the monitoring of those resources during construction. As the Council may recall, an extensive amount of work was done to survey the project area for cultural and archaeological resources prior to filing the application. The result of that work, which was performed by a contractor selected by the Lummi Indian Nation, was a series of recommendations about what should be done during construction. BP when it prepared the Draft Site Certification Agreement, proposed to incorporate the recommendations of the Lummi Tribe with respect to cultural and archaeological resources. However, the final SCA that came out of the Council included slightly different language. BP wasn't exactly sure what the requirements that the Council had come up with meant, and whether or not they were something different than what the Lummi were proposing. But in any event, what BP is asking is that potentially we not try and work out all the details now; that a detailed plan will be prepared later, but that the site certification agreement follows the recommendation as proposed by the Lummi.

The third provision that we would like to call your attention to is Article 5(h)(5), which is a section that as written requires that construction vehicle trips be coordinated and scheduled away from rush hour. BP is asking that you remove this requirement. All of the traffic studies that were done prior to the filing of the application took very conservative assumptions. It assumed that the maximum project construction traffic would be added onto current refinery traffic and other current traffic in the area, and based on those studies BP negotiated a traffic mitigation package with the Department of Transportation. As you recall they're going to be upgrading a left-turn lane at one intersection, and they're going to be installing a traffic light at another intersection. After BP agreed to do those mitigation measures, the Department of Transportation agreed that nothing further was necessary. So BP hasn't proposed coordinating and scheduling their traffic, and the Department of Transportation didn't think this was necessary. BP is asking that you remove that requirement from the site certification agreement. That's it I guess in a nutshell, although perhaps not as brief of a summary as Allen had hoped.

MR. FIKSDAL: That was just fine. Mr. Chairman, again, Irina and I had a couple discussions with the representatives from BP, and there were other issues that BP had that we worked out prior to this motion. Many issues had to do with getting a better understanding of what the requirements would be and that would be in a commitment document that the Applicant or if the governor signs this, the certificate holder would prepare that would outline in more specificity the exact details of some of the requirements in the SCA and how those would work. This is how the Council has operated in the past, and staff didn't feel they were that important now. The issues that are brought to you are the ones that staff felt were important. If the changes needed to be made, they should be made in the site certification agreement and not some other document. So staff recommends, and I will let Ms. Essko speak for herself, but Irina and I will recommend that the Council approve the motion and change the site certification agreement as requested.

CHAIR LUCE: Thank you. Ann, you have some comments you would like to make.

MS. ESSKO: The portion of the motion for reconsideration that I worked with Karen McGaffey on was the portion with respect to Article 3(a)(1) dealing with the legal relationship between the parties. The original version was indeed somewhat problematic in that it did purport to require BP to bind its subsidiary corporations, affiliated partnerships, contractors, subcontractors and their successors and interest to the terms of the contract that requiring would be fraught with some legal difficulties at best. The alternative language that we are proposing to you requires the certificate holder and its successors and interests to be bound by the contract and also the State of Washington, and it holds the affiliates of the certificate holder, its agents, its contractors, and its

subcontractors to the terms of the site certificate agreement by the mechanism of requiring BP to ensure that they do comply with the terms of the SCA; that any activities undertaken with respect to the project or the site will comply with the SCA. It also clarifies that the bound entities include agents and affiliates, so that loops in the related corporations, related entities, related partnerships whether they control BP, are on the same level as BP, or are controlled by BP. So in my view this accomplishes the goal of the original language without the potentially problematic attempt to get BP to bind entities that are separate, legal entities to the terms of the contract.

CHAIR LUCE: Councilmembers, any questions?

MS. TOWNE: Yes. There was a fourth part of the motion for reconsideration, and it dealt with a clerical error on the last two pages of the motion, and I don't know if you want to deal with that separately or as a part of a package that we will take action on. It seems like it ought to be folded in.

MR. FIKSDAL: I recommend that you fold it in. We didn't speak of items that are not substantive, but, yes, they need to be changed, the clerical errors.

MS. ADELSMAN: Are we taking them each separate or can we discuss them all?

MS. TOWNE: First, we need a motion. **I move that the motion for reconsideration submitted by BP West Coast Products on October 7 be approved.**

MR. IFIE: **I second.**

MS. ADELSMAN: My only question is relating to the third one. I thought, there was some information in the file, and I can't remember if it was any testimony, regarding the traffic and the increasing traffic, especially during the rush hour. I thought there was enough there that it was a concern to us, and I'm not really sure whether this was an issue that DOT was concerned about or whether it was an issue that more related to the local traffic and how to try and minimize it. I think DOT dealt more with the safety, with installing the light. So I wasn't sure whether we have some type of information supporting the concern regarding rush hour or is it something that . . .

MR. FIKSDAL: Karen, did you hear that?

MS. McGAFFEY: Yes, I did, and I think I can address it. I guess the first thing to recognize is that in the area where the project is located there is not a traditional rush hour. It's in a very rural setting as you know. So in a sense whenever construction traffic is leaving from this project that's going to become the rush hour which I guess raises one of the concerns we had about what exactly this requirement would mean. But I think getting to your point, Hedia, the analysis that was done on traffic show that there would be potential delays if the maximum existing traffic coincided with the maximum construction traffic. There could be delays at the Portal Way - Grandview Road intersection that would be excessive according to the standards for level of service. That was the motivation behind the agreement with the Department of Transportation to install that traffic light; that it was not purely a safety issue. Although there was a safety aspect to it, it was also to address traffic flow and potential backup. With that said, as you may recall, the application when it was filed contained all of this traffic analysis and traffic projections. It identified the potential problem at the Portal Way and Grandview Road intersection, and then it outlined or it listed a number of ways that that problem could be addressed. One of the potential ways was to schedule traffic, but in negotiations with the Department of Transportation everyone agreed that the more effective way to deal with it would be to install a traffic light. It would not only be more effective, but it would prevent disruptions with construction and trying to negotiate a schedule.

MR. FIKSDAL: Whatcom County reviewed this motion, all the contents of this motion, and had no objection to the motion. Also I'd note the Counsel for the Environment, Mary Barrett, also reviewed this and had no objections to the motions.

MR. SWEENEY: Is Dan McShane on the phone?

MR. FIKSDAL: Not that I'm aware of.

MS. TOWNE: I have a question in regard to Article 5, Cultural and Archaeological Resources. You raised the question, Ms. McGaffey, about the definition of artifacts and cultural resources as they were stated in the original Draft SCA and ended up under the same heading of cultural and archaeological resources and then dealing with the discovery of archaeological artifacts. So the implication is whatever cultural resources are, and it is not defined within the SCA, your condition, your reworded condition would not deal with whatever cultural resources are. Is that a correct reading?

MS. MCGAFFEY: I don't think that's necessarily the inference that should be drawn from that. What we tried to do was really stick to exactly the same language that the Lummi had used, and what we found confusing about the original language in the SCA was that it seemed to imply different requirements associated with those different words, but we weren't sure what the words meant. I think in discussing this with Allen and Irina it became clear that prior to construction a detailed plan and protocol is going to have to be put together that's going to say exactly if you find X, do the following. If you find Y, do the following. And that's going to need more specific terms that are going to need to be defined, and it's going to be developed by somebody with some background in archaeology, so that these words are being used properly. So rather than us trying to come up with definitions or real precise specifications now, we are really proposing deferring that until the detailed plan is developed.

MS. TOWNE: Thank you. I also had a question on your proposed alternative provision. This is G(1), "the certificate holder shall monitor". There were a couple wording things that looked strange to me, and maybe you can help me. It says "any construction activities that occur within 30 meters of the location". I think it should be "of" rather than "with", and then on down the next sentence, "monitoring shall be directed by an experienced archaeologist", and then the third section "any lithic materials discovered". I'd just say "in Laydown Area No. 3 during construction", get rid of "in construction".

MS. MCGAFFEY: I agree that all those changes would be improvements.

CHAIR LUCE: Any other questions from the Councilmembers? Having no more questions, the Council will now entertain a vote. Call for the question. The question is called for. Want a roll call vote? We will take a voice vote. All in favor say aye.

COUNCILMEMBERS: Aye.

CHAIR LUCE: **By unanimous vote the motion to adopt the changes is approved. Thank you very much. The motion for reconsideration is approved.**

MS. ADELSMAN: I just have a question that's more curiosity. Does it mean the SCA will be redrafted with this new --

MR. FIKSDAL: Yes, I think, Ann, do you want to go over the probabilities of what is going to happen next?

MS. ESSKO: Staff and I will sit down with the original version of the order and the attached SCA and then develop a proposal for the best mechanism to do a version that incorporates the changed information. In other words, will the existing Order 308 remain the same, and you issue another order that makes changes, or do you just do an entirely new order, an amended order with the new SCA conditions attached? As I sit here, my view probably is that it's easier to do

an amended order with a new SCA, so that people don't always have to remember that there's two orders dealing with this site.

MS. TOWNE: So this would be a superseding order.

MS. ESSKO: Yes, but I need to think about that some more and talk to Allen, and when Irina gets back look and see what the Council did in the past and maybe they had some brilliant way of dealing with this. So we'll get something back to you for your consideration.

MR. FIKSDAL: I want to correct you. It's order 803. You said Order 308.

MS. ESSKO: Sorry.

MS. ADELSMAN: But you are not expecting anymore action from us. We're done; is that correct?

MS. ESSKO: Right.

MR. FIKSDAL: I would expect that you have completed your action. We'll prepare an order. We'll send you a copy and say, "We are about to issue the order. Do you have any questions or comments?", and you can comment on that order. But no other public action is necessary.

MR. FRYHLING: We don't have to re-sign that order?

MR. FIKSDAL: I will check with Ann, and we'll figure out you if you all need to re-sign it or if the amended order can just be issued by the Chair. We don't know.

CHAIR LUCE: Thank you. The next --

MR. FIKSDAL: Just before we go on, Ms. McGaffey, do you understand what we're going to do?

MS. McGAFFEY: Yes.

MR. FIKSDAL: Do you have any questions or comments about that process?

MS. McGAFFEY: No, it sounds good.

CHAIR LUCE: Thank you, Ms. McGaffey.

## **ITEM NO. 7: PROJECT UPDATES**

<b><i>Kittitas Valley Wind Power Project</i></b>	<b><i>Allen Fiksdal, EFSEC Chair</i></b>
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CHAIR LUCE: Next on the agenda are a number of project updates beginning with Kittitas Valley Wind Power Project.

MR. FIKSDAL: I think the update is that the Council has approved a suspension of its review of the Kittitas Valley Wind Power Project until I believe early March, and we will concentrate on the Wild Horse Wind Power Project.

CHAIR LUCE: Thank you. Sumas Energy.

<b><i>Sumas Energy 2</i></b>	<b><i>Allen Fiksdal, EFSEC Chair</i></b>
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MR. FIKSDAL: You recall that Sumas Energy has submitted a request to renew the Notice of Construction (NOC) and Prevention of Significant Deterioration (PSD) air emissions permit. We have scheduled a meeting, a public meeting for I believe October 28th up in Everson to hear comments on the draft permit that's been issued. Mariah will be coordinating the travel with the Councilmembers. I believe we're scheduled to fly up to Bellingham, if there is enough Councilmembers, and hold the hearing up in Everson and then fly back. If there isn't enough Councilmembers, we'll be driving to that meeting.

CHAIR LUCE: There will be phone hookup?

MR. FIKSDAL: No.

CHAIR LUCE: There will be a transcript to read, if possible?

MR. FIKSDAL: There will be a transcript, yes. Again, it's just to receive comments. You're not going to take any action at that meeting. It's just to receive the public comments for that draft permit.

MS. ADELSMAN: So what's the number or threshold for flying?

MR. FIKSDAL: It's about five or six.

MS. ADELSMAN: Okay.

MR. FIKSDAL: Am I correct?

MS. LAAMB: Yes, that's correct. We have three or four right now. So unless that changes, it's more than likely you will be driving. So I will verify that, and then let you know tomorrow whether or not it is going to be a driving trip or not.

**Columbia Generating Station**

**Mike Mills, EFSEC**

CHAIR LUCE: Mike, what's happening in the Columbia Generating Station?

MR. MILLS: Mot Hedges is here from Energy Northwest to tell the Council about what's happening at the Columbia Generating Station.

CHAIR LUCE: All right. Welcome, Mot.

MR. HEDGES: The Columbia Generating station is operating at 100 percent power. We've been on line for 50 days now since our last outage.

**WNP-1/4**

**Mike Mills, EFSEC**

MR. HEDGES: For WNP-1 and 4 the restoration is progressing on, and we're in the process of preparing information, an information package that will get over here next week prior to your site visit on the 26th.

CHAIR LUCE: Good.

MR. HEDGES: Are there any questions for me?

CHAIR LUCE: Hopefully the plywood covers on some of those deep, deep holes will have been either strengthened or --

MR. HEDGES: If things go right, I don't think they will be needed. So when you get over there, -- there's been an amazing amount of work done in the last three months.

CHAIR LUCE: I was only joking because I've heard there's been an amazing amount of work done.

MR. HEDGES: But you're right to question those. There were some of those plywood covers that were pretty questionable. So they're getting taken care of, so they won't be needed, and I think by the time you get over there we won't need those plywood covers.

CHAIR LUCE: Fabulous. Thank you very much.

MR. MILLS: Jim, I'd just remind the Council we do have a site visit scheduled for Tuesday, October 26, and we are planning on flying in the State Patrol plane from Olympia to the Tri-Cities area in the early morning and then returning around 5:00 or 6:00 that same evening. We will have a chance to look at the 1 and 4 sites, the restoration work that Mot referred to. We will have a chance to meet with Energy Northwest staff and their management team, including Vic Parrish, their CEO, during the early afternoon and discuss some other compliance issues and matters that we've got pending with Energy Northwest. Then I would also like to include just a brief visit to an area where we can view the Badger Mountain property. Staff and the Chair and Dick Fryhling have been in discussion with the City of Richland, Benton County, the Friends of Badger Mountain, and the Trust for Public Land about a piece of property that's available for purchase on Badger Mountain, and we would like to have the Council take a look at that and evaluate that property and just become familiar with what we're talking about there.

CHAIR LUCE: Could you give us just a brief update on what you saw last week, you and Dick, when you were over there.

MR. MILLS: Dick and I had a chance last Tuesday to meet with the City of Richland, Benton County, Friends of Badger Mountain, and representatives from the Trust for Public Land. We talked about the funding requirement which is about \$700,000. We believe that the City of Richland will contribute a portion of that funding. The Friends of Badger Mountain group is about to undertake a fund raising effort and may have some funds available. Then, of course, they're all aware that the Council is sitting on the 3.5 million dollars, and I think that from staff's perspective we have committed that the Council is certainly interested in supporting this project. But, of course, we've made no final commitment. We also had a chance to drive completely around the mountain, stopping at different locations, and the local representatives were able to point out items of interest. We observed that development is moving up the mountain quickly, and, of course, the interest in the local area is to preserve this for open space and recreational purposes. Dick, did you want to add anything?

MR. FRYHLING: No, the trip around the mountain was very good for me from the standpoint that I could understand what they were talking about, and also we got up on the various benches, and we could see the development how far it's gone up on the hill. But Badger Mountain is still available for us and has open space.

CHAIR LUCE: Now, correct me if I'm wrong, but as I understand it this project is supported by the city.

MR. MILLS: City of Richland.

CHAIR LUCE: The County.

MR. MILLS: County Parks and the Commissioners as we understand it.

CHAIR LUCE: Friends of Badger Mountain which is a number of community activists.

MR. MILLS: Yes.

CHAIR LUCE: Trust for Public Land.

MR. MILLS: The Trust for Public Land is currently negotiating with the property owner.

CHAIR LUCE: And a number of state legislators over there.

MR. MILLS: That's what we've been told, but I don't know that we've received anything in writing. But the correspondence we have received from the City of Richland indicates that, yes.

CHAIR LUCE: And the Tri-Cities Herald I believe has editorialized in support of this project.

MR. MILLS: There have been several news articles that have provided information and I believe supported it.

CHAIR LUCE: I specifically recall there has been an editorial supporting save the Badger Mountain as an open space area in a rapidly expanding urban growth area.

MR. MILLS: Yes.

MS. TOWNE: Mike, some weeks back we talked about connecting a side trip to meet with the City of Richland and/or Benton County officials with our site visit to WNP-1/4. Are we still looking at doing that on Monday the 25th or not?

MR. MILLS: No, we will try to tie that in as we're leaving the Energy Northwest sites, and actually there's one location where we can meet with the local officials and view the mountain, and I think that will leave it to a one-day trip for Councilmembers.

MS. TOWNE: So the 25th is out.

MR. MILLS: The 25th is out. We will do that as we're leaving. That will be the last thing we do before we depart the Tri-Cities on Tuesday the 26th.

MS. ADELSMAN: So, Mike, is the other project completely off the table?

MR. MILLS: That's our understanding at this time. The Rattlesnake Slope Acquisition, the large piece of property that was being pursued, as we understand it, the property owner has removed it from consideration.

CHAIR LUCE: We've repeatedly called our contact at WDFW and asked to be updated and haven't received any return phone calls. The return phone call that we did receive was maybe a month ago?

MR. MILLS: Three weeks probably.

CHAIR LUCE: The message at that time was to the effect that the owner had, I guess you would say, seller's remorse. It appears that the property was just too close to him personally; that the terms that had been offered were fair. He acknowledged that. He was offered a life estate to stay as long as he was among us, but that it was too close to his soul to sign a piece of paper that said it's not mine, life estate or not.

MS. ADELSMAN: So that's what Mike is saying now he's completely pulled out, so it's really beyond remorse. It seems like it's pretty much not going forward; is that correct?

CHAIR LUCE: Well, the Seattle Seahawks said they had a win in the bag in the middle of the fourth quarter, and there's a lot of remorse up in Seattle. And the Cougs probably felt the same way.

MR. PEEPLES: A lot of remorse in Pullman.

CHAIR LUCE: You know it ain't over until the lady sings, but on the other hand that's kind of what it looks like.

MR. MILLS: I think I would add though regarding the Council and the monies that are under its control even if we do a local project or two, there's still enough money if the Rattlesnake property becomes available – if something would change, that the Council still would have a considerable amount of money that it could put towards a possible acquisition. So from our perspective, I don't think it is closed, or it could be reopened. We don't know that right now, but the Council would be able to respond, and I think that's the important thing to remember.

MR. FRYHLING: Didn't Jeff Taylor say something to the effect that he was just going to stay away from him for a month or so before he goes back and talks with him?

MR. MILLS: Yes, I think there's a waiting period that will happen now, and then I'm assuming because the value of that particular piece of property that he will be approached again. So we will continue to coordinate with the Department of Natural Resources, and Jeff Taylor is our primary contact. That's all I have.

MR. IFIE: Quick question. If there was the worst-case scenario and the Rattlesnake Slope Acquisition falls through for good, is there a potential that there would be a request for a proposal sent out, an advertisement asking for proposals as opposed to going to one place or the other? Could there be an open solicitation?

MR. MILLS: My answer would be that I would defer that to the committee, to the Council committee that's been established. It certainly makes sense that the Council would want to consider your idea Tony. At this point in time the focus has been on the Rattlesnake property and also Badger Mountain.

CHAIR LUCE: I think you will remember we have an obligation under our contract with Energy Northwest, Bonneville and the Department Of Energy to spend at least 50 percent of the money in Benton County, and so the request for proposals would have to be shaped in that manner.

MR. FRYHLING: I think originally we talked about going out for proposals, but then the Rattlesnake Slope property came back on line again and felt there wasn't a need for it. But

maybe there is. If we don't hear anything, say within another month or so, we probably will need to look at some other proposals or a process.

CHAIR LUCE: Right.

MR. IFIE: The issue is the timeliness. How long will this process go on? Will it go on for a year, two years, three years? It seems to me like at one time we had a three-month time frame. The three-month time frame has gone by a long time ago probably. I wasn't tracking. So I mean there needs to be some discipline to the process.

MR. FRYHLING: Well, I think there was discipline in the process because we had all but the gentleman's signature on a contract, and then he pulled out. So at this point in time this is still probably the number one priority in the area.

MR. IFIE: If he pulled out, then he pulled out. He's either pulled out or not pulled out. You can't keep going back and forth. It's wishy-washy.

CHAIR LUCE: Right. There is process on the buyer's end. On the seller's end, there was process but no willingness to close. So we can control our end, but we can't control the other end. I think Badger Mountain stands a reasonable chance of being closed early, much earlier because there you have both willing buyers in EFSEC and local groups and certainly you have a willing seller in a community that wants to put this project to work. So that's a marked difference from what you had with the owner of the Rattlesnake Ridge property, who couldn't make up his mind whether he wanted to sell or not. And then after that I think we need to go out with possibly a request for proposals. I think you mentioned we are not going to meet with the community there; although, Benton County and the City of Richland are going to be looking at this for the county commissioners and the city.

MR. MILLS: In early November.

CHAIR LUCE: Early November. At that point, Chris, it might be appropriate to go back over and meet with them.

MS. TOWNE: Okay.

CHAIR LUCE: At that point in time a request for proposals may be entirely appropriate for Benton County or other properties. My guess is, just my guess, is that, you know, I don't even want to guess. I was going to guess that there probably would not be a huge number of properties available, but then, again, I think, well, Benton County is pretty big.

MR. IFIE: You don't know until you try.

CHAIR LUCE: It gives some fairness to the process. So anyway that's it.

MS. ADELSMAN: I think what Tony is saying is maybe something we should consider. Sometime in December or January let's say we're going to move on, and we've given this person plenty of time to think about it. We're going to move on and go and start soliciting some projects both in Benton and neighboring counties and if Badger goes forward, that's fine. But at the same time we put a closure to our process, so we're not continuously hanging and waiting. I think give it a couple months.

CHAIR LUCE: Excellent, Hedia. We have formally told Jeff Taylor that he should communicate with the owner of Rattlesnake Ridge property that this was going to happen, that we were not going to wait, and there were other projects that we were either interested in now or would be made known through the RFP process. Now we haven't put that in writing, but I'm trusting that Jeff at WDFW, as far as the negotiation process, will go back to the other party and say, "Look, nice piece of property. Yours is not the only one on the face of the earth. There are other homes for sale in this neighborhood, and so it's time to decide whether you want to buy this home or the one down the street. My buyer is looking at several homes."

MS. ADELSMAN: The interesting thing in January is that there are a lot of agencies, whether it's the Interagency Committee for Outdoor Recreation (IACOR) or others, they have some money for land acquisition.

MS. TOWNE: Like the Washington Wildlife & Recreation Program(WWRP)?

MS. ADELSMAN: Yes, like WWRP and there are some other organizations. January is usually the time when they open up their request for proposals, so I think it gives us an opportunity to maybe work with other agencies on cost sharing or seeing what's happening. So we may not want to lose that opportunity sometime in January, and it gives two months, two additional months for whatever needs to happen.

CHAIR LUCE: You never want to lose an opportunity for cost sharing.

MS. ADELSMAN: No.

CHAIR LUCE: All right. Great. Anything else on that? Shall we move ahead to Chehalis.

<b><i>Chehalis Generation Facility</i></b>	<b><i>Mike Mills, EFSEC</i></b>
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MR. MILLS: Just a brief report. The plant has been running during the past month usually during the day and then shutting down to about half power in the evenings. I was at the site last Friday and did a walk down of the entire plant. There's been no compliance issues over the past few months. They're meeting all the air emission requirements. They've had a good safety record. I guess the one issue that we're following and tracking is noise, and they're continuing to experience some issues, particularly with two properties that are very close in proximity to the plant site. They're working individually with those homeowners and continuing to work on plant systems and looking for additional ways to make improvements at that site in terms of reducing noise, particularly start-up noise when the plant starts up. I've asked Duncan to come to the November 1st Council meeting and make a more formal report, particularly on the noise reduction initiatives that the plant has undertaken for the past few months. Again, I think from staff's perspective they're doing a lot. A lot of it is as they're gaining more experience with the plant and its operations they're continuing to look at all areas to try to target where the noise is coming from and look at ways to make improvements.

CHAIR LUCE: How are we doing in terms of neighborhood complaints?

MR. MILLS: There's just the two properties, Jim, that have voiced any concern since the summer, over the past four to five months. One is right next door, and the other one is probably within 200 yards to the other side to the east.

CHAIR LUCE: Are these complaints coming on a daily basis, weekly basis, monthly basis?

MR. MILLS: Monthly.

CHAIR LUCE: Once a month.

MR. MILLS: Once a month. Again, when Duncan McCaig, the plant manager, receives a complaint he goes directly to the homeowner, the property owner and meets with them and tries to ascertain what they heard, what kind of a problem the noise issue was to them personally. Then they've continued to have the monitoring stations, and they assess those measurements against what the people are telling them, and then listen themselves and go back and try to make improvements in certain areas.

CHAIR LUCE: This sounds too simplistic, but have they tried to compensate the homeowner with heavy duty windows?

MR. MILLS: In one case they have purchased windows, yes, and they've put up noise walls on the plant on the sides. They're doing things with the homeowner on their property and also at the plant.

CHAIR LUCE: Okay. Thanks.

MS. ADELSMAN: I'm assuming in the summertime that's maybe where the problem is.  
 MR. MILLS: For one of the properties it was during the summer when they wanted to open their windows.  
 CHAIR LUCE: Air conditioning. It's cheaper than taking the phone calls.  
 MR. MILLS: They started with better windows.  
 CHAIR LUCE: I understand.  
 MR. MILLS: Again, the company seems to be responsive and they're continuing to work on the issues as they arise.  
 CHAIR LUCE: Okay. Thank you very much.

**ITEM NO. 8: EFSEC RULES**

<i>Final Adoption</i>	<i>Allen Fiksdal, EFSEC Chair</i>
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CHAIR LUCE: Let's see. EFSEC Rules. Actually, Allen you're up.  
 MR. FIKSDAL: As you all know, we've been working on the rules for quite a while now. You have had a chance to look at the rules and the proposed changes. Before you, you have the latest version of those changes that went back to the Code Reviser's office, OTS, and were reprinted based on the changes that were suggested. I think you've all seen those changes. This is the final version of it, so it's my recommendation that you go ahead and adopt these changes to the rules. The changes include the modification of existing rules and the adoption of new rules particularly in the standards for siting energy facilities. Mr. Carelli has finished his work on the Concise Explanatory Statement. You have a copy of that in front of you. This is a slightly different version. I shouldn't say different version. There have been some edits made in this version. Ms. Towne and myself had some comments on the version that we gave to you last time, whenever that was, but I don't think there's any substantive changes, just the edits to make it clear and more concise. So I would recommend that the Council issue or adopt these rules and issue the CR 103 as a rule making order, and that would complete your rule making exercise except for transmittal of the CR 103 and the final copies to the Code Reviser's office. If you adopt these today, they will become effective in 31 days which I believe will be November 11. We will ship this Concise Explanatory Statement to JLRC, the Joint Legislative Review Committee. Mr. Carelli is going to prepare a rules implementation plan that the Council needs, and he will be getting that to us in a week or two or 10 days.  
 MR. CARELLI: Within a week to ten days.  
 MR. FIKSDAL: Ten days. That doesn't need to be submitted to anybody. You just have to have one. So I believe that all the pieces are in place. The Council has gone through a lot of work, and I recommend that you issue the CR 103, and we will have the Chair sign the document and take it up to the Code Reviser's office.  
**MR. IFIE: I move that the Council approve the changes to the rules, adopt the rules.**  
**MS. TOWNE: Second.**  
 CHAIR LUCE: Discussion.  
 MR. FRYHLING: Question.  
 CHAIR LUCE: Question has been called for. I think we'll take a roll call vote on this. Clerk, let's call the roll.  
 MR. MILLS: Community Trade and Economic Development?  
 MR. FRYHLING: Yes.

MR. MILLS: Department of Ecology?

MS. ADELSMAN: Yes.

MR. MILLS: Department of Fish and Wildlife?

MS. ADELSMAN: Yes.

MR. MILLS: Department of Natural Resources?

MR. IFIE: Yes.

MR. MILLS: Utilities and Transportation Commission?

MR. SWEENEY: Yes.

MR. MILLS: Chair?

CHAIR LUCE: Yes.

**MR. MILLS: Motion carries unanimously.**

(Applause.)

CHAIR LUCE: Well, congratulations. It has been two years. We started this in December of 2001, and anybody that says regulatory reform is easy is smoking something. So there's too many people to thank, so I'm not going to even try. But a couple of names do come to mind. First of all, Governor Locke for giving us a good swift kick in the behind and telling us that this has to get done or else, and he really meant it. Second of all, all of the staff that made this possible. Allen whose eyes rolled when I told him what we had to do and was in total disbelief. They talk about the rock. They talk rock, shock, and awe. Allen was in shock and awe. You've got to be kidding me. Get out of here. This is not going to happen. But all of the staff that worked on this. Bud Krogh, who's not here, who facilitated the stakeholder group very well. Chuck Carelli, who is here, who was one of the mainstays actually putting these rules together and then had double torture by having to stay over and write the Concise Explanatory Statement. Jenene Fenton, who is not on the Council anymore, she and I had wonderful scraps about Fish and Wildlife and what was the floor and ceiling. It was a lot of fun in sort of a depraved way. I guess it's going to be very interesting to see what happens. We are not going to build any power plants in the near future, certainly not any larger than 350 megawatts, but maybe some more alternatives.

I think when you look back on this, (A) The rules will make a big change; (B) The Governor and the Council is going change, and by that I mean we're not going to be having I don't think the same lengthy types of acrimonious hearings that we necessarily had in the past because if you meet the standards for noise or seismicity or air, you met the standards. So we don't have to drag experts from all over the globe to argue about what somebody else's standards were. We've defined what our standards are. You meet it, you pass go, you collect permit unless there's something in the SEPA statement that demonstrates that more is required in which case more is required and more should be required. So I think this is a really great day. Now to celebrate this day, -- we will do a little more celebrating in the future. Chris and I went to lunch to figure how I celebrate this day, and . . . .

MR. FIKSDAL: All that work and we get a lollipop.

CHAIR LUCE: It's almost three years, and you can't believe that you bought it; can you? Well, it was a voice vote, and you can't take it back now.

MR. IFIE: Is this a substitute for the champagne that's coming down the road?

CHAIR LUCE: Champagne is coming down the road. Here you go, Mr. Carelli?

MR. FRYHLING: Does Chuck get two for work before and after?

MR. IFIE: Did you bring enough?

CHAIR LUCE: Here you go, Allen.

MR. FIKSDAL: Thank you

CHAIR LUCE: Anyway, a good nearly three years work done.

MR. FIKSDAL: I think what will happen is we will take these to the Code Reviser. The Code Reviser is going to incorporate the changes into the rules. They will recodify our title, Title 463. I don't know how long that will take. We'll probably find out today or tomorrow. It could take up to two, three weeks. You never know. Once it is recodified, we'll get a file back from the Code Reviser and have a new rules book published and get it out to all the Councilmembers, and I think the Chair would like to send copies to all the stakeholders and notices to all the interested people who helped us work on the rules and on our mailing list. I think we will probably have some sort of celebration and coming out of the new rules maybe in November or December.

CHAIR LUCE: Okay. So way to go. Not to forget Darrel who was there all along. Not to forget the Energy Policy Office.

MR. PEEPLES: You can have the sucker.

MR. FIKSDAL: I want to thank everybody too for helping in this, especially Chris. There's no words. We needed you, and thank you for all your help.

## ITEM NO. 9: EFSEC COST ALLOCATION

<i>2<sup>nd</sup> Quarter FY 05</i>	<i>Allen Fiksdal, EFSEC Chair</i>
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CHAIR LUCE: What's next on the agenda?

MR. FIKSDAL: Number nine, Cost Allocation. That's me. In your packets you will see a pink sheet, and according to the cost allocation plan that the Council adopted in September at the beginning of each quarter I was to prepare new numbers for each quarter, and so I have done that for the second quarter of fiscal Year 2005 that started October 1. I take the time that Irina and Mike charged to specific programs during the past quarter to determine what the cost allocation percentages will be for each of the projects before the Council, and you'll see here what that is. So based on the cost allocation plan for this second quarter, the period October 1 through December 31, 2004, these are the percentages that are charged for those indirect costs that are not attributable to each project.

MS. TOWNE: Just for clarification, Allen, I'm going back to our discussion at the last meeting. Does this include a predictive factor or is this based strictly on the past, the last quarter's actuals?

MR. FIKSDAL: Based strictly on the past quarter's actuals. There's no predictive factor.

MS. ADELSMAN: So Kittitas which we don't anticipate a lot of action is going to actually happen -- we are charging more to it than Wild Horse which is now going to have more action. It's the reverse.

MR. FIKSDAL: That's correct. But the next quarter will reflect the change, so starting January 1, 2005, they will see that. Yes, that's right. It isn't reflective on the existing work load. The plan that you adopted it would be the past quarter. You are basing it on the past quarter's time.

MS. TOWNE: Theoretically over time it should even out.

MR. FIKSDAL: Yes, that's correct.

MS. TOWNE: But in any given quarter there may be a discrepancy.

MR. FIKSDAL: That's correct.

CHAIR LUCE: So next quarter Wild Horse will be up and Kittitas will be down.

MR. FIKSDAL: Kittitas Valley should be down around one percent or something like that, and Wild Horse should be up a lot higher.

MR. IFIE: Good work.

MR. SWEENEY: No action?

MR. FIKSDAL: No, there's no action. This is just a report.

MS. ADELSMAN: Are you going to send this electronically?

MR. FIKSDAL: If you would like me to.

MS. ADELSMAN: Yes, I would like to.

CHAIR LUCE: What was that, Hedia?

MS. ADELSMAN: I just needed this electronically and Allen said he will send it, so I can give it to our fiscal people.

## **ITEM NO. 10: OTHER**

CHAIR LUCE: Anything other? I notice that we have passed out the per diem rates, the new per diem rates. I want you to know that your congressional delegation has worked hard to equalize the per diem in Clark and Skamania County. So those of you who want to attend conferences or need to attend conferences in Portland no longer need to stay in Oregon. In fact, you can stay Skamania at the lodge now and actually enjoy a nice room. It's right across the bridge with a decent 18-hole golf course, and I'm not suggesting you would play golf, but it's a wonderful facility. Clark County is also at \$93.00. You would not believe the amount of work that it takes to move something from \$60.00 to \$93.00, not withstanding the fact that the neighboring state next door already has a per diem of \$93.00, and it's in the same metropolitan area. Just an interesting comment on the way that government sometimes works.

MR. FIKSDAL: Mr. Chair, we have a meeting. For those that are going to attend the Sumas 2 PSD meeting, and there are two Councilmembers that have indicated that they're going to be traveling to Everson and that's Mr. Fryhling and Ms. Towne. So between those two and, Chris, I assume that you would be driving.

MS. TOWNE: Yes.

MS. ADELSMAN: I was going to go too.

MR. FIKSDAL: Oh, I see. It appears that we won't have enough for the state plane, so we will be driving. We will be contacting those who have indicated they're going to go, and we'll probably have a van that goes up.

MS. ADELSMAN: The meeting is in the evening.

MR. FIKSDAL: The meeting starts I believe at 6:30. We'll probably be leaving here around 3-4 p.m.. It takes us about three hours to get there. We'll figure it out. It will be in the afternoon sometime.

MS. ADELSMAN: Just let us know.

MR. IFIE: One quick comment. I want to thank Mariah Laamb and Shaun Linse, whoever was responsible for putting out the minutes from the last EFSEC meeting. It's very helpful because the minutes are very, very relevant when it's a recent meeting. So I want to thank all the people that are responsible.

MS. ADELSMAN: You mean the meeting we had up in --

MR. IFIE: September 20. So it's very relevant. Thank you.

**ITEM NO. 11: ADJOURN**

MR. SWEENEY: Move to adjourn.

CHAIR LUCE: Its gavel time. Thank you.

(Council meeting was adjourned at 2:43 p.m.)